



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/153345

PRELIMINARY RECITALS

Pursuant to a petition filed November 07, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on December 12, 2013, at West Bend, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's MA application.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Ken Benedum

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. On September 18, 2013, the Petitioner submitted an application for long-term care Medicaid, Family Care.

3. On September 20, 2013, the agency issued a Notice of Proof Needed to the Petitioner informing her that the agency required verification of a burial trust, checking account and self-employment income. All additional information was to be submitted to the agency by September 30, 2013. The notice specifically requested the current balance of the burial trust and a copy of the signed contract with the funeral home.
4. On October 2, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her MA application was denied because the requested verifications were not provided.
5. On October 7, 2013, the agency received a Statement of Funeral Goods and Services and a Notice of Account Disclosure showing a balance of \$6,836.98 as of January 4, 2011 in the Petitioner's irrevocable funeral trust.
6. On October 10, 2013, the agency issued a second Notice of Proof Needed requesting information regarding the burial trust by October 21, 2013. The Notice also contained a note from the agency indicating that \$3000 of the burial trust is exempt with the remainder of the trust being counted as an available asset. It notes that this would put the Petitioner over the asset limit for the program. It advises that "If Trust is converted to Burial Ins. it would then be an unavailable asset. This change would need to be completed by October 31, 2013."
7. On October 22, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her MA application was denied because the request verification was not provided.
8. On November 7, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The MA asset limit for a group of one is \$2,000. Wis. Stat., §49.47(4)(b)3m. MA policy confirms that the MA asset limit for a group of one is \$2,000. Medicaid Eligibility Handbook, Appendix 39.4.1, "Elderly, Blind & Disabled (EBD) Assets and Income Table. If available assets are above that limit, the person is not eligible for MA. The statute does not allow for outstanding debts to be deducted from assets, nor does it provide any exceptions for unusual situations. An asset is considered available if it can be sold or disposed of by the owner or the owner's representative, the owner has legal title to it, and the owner has the legal ability to make the money from the asset available for support and maintenance. Medicaid Eligibility Handbook, 16.2.1.

The MA Handbook, Appendix 16.5.1 provides that burial trusts are exempt up to \$3,000. Any part of a burial trust above \$3,000 is considered an available asset. In addition, Appendix 16.5.4 exempts burial spaces, including caskets, with no limit. Those provisions are based upon Wisconsin law. Wis. Stat., §445.125(1)(a)2 allows for irrevocable burial agreements up to \$3,000. However, Wis. Stat., §701.12(1) provides that any part of a burial trust above \$3,000 can be revoked even if the document says it is irrevocable. Thus, because any amount above \$3,000 can be revoked, that amount can be considered available to the person.

In the instant case, the agency determined that the Petitioner's total assets at the time of application exceeded the \$2,000 MA asset limit based on the information received that the burial trust balance is \$6,836.98. As noted, \$3,000 of the burial trust is exempt while anything over that limit is a countable asset.

At the hearing, the Petitioner's power of attorney testified that he has always reported the burial asset and that it has not been an issue with regard to eligibility until this year. The agency noted that the balance of the trust was previously listed as \$3,000 and the actual balance was not known until this review. It is not clear whether there was agency error or client error with regard to the exemption for the trust in previous years. Regardless, the agency must act on the information that is known. The Petitioner's representative

did not dispute the trust balance or present evidence that the balance is different than what was provided on the statement of account.

The statutes and regulations are clear that any amount of a burial trust exceeding \$3000 is not exempt for purposes of determining MA eligibility and an individual with assets exceeding \$2000 is not eligible for MA. Based on the evidence presented, the Petitioner's assets exceed \$2000 and the agency correctly denied the application.

I note, as the agency did in the notices sent to the Petitioner, that there is an option to convert the trust to burial insurance so that it will not be a countable asset.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's application for MA.

THEREFORE, it is ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of January, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 22, 2014.

Washington County Department of Social Services
Division of Health Care Access and Accountability